IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO. 217 OF 2004

IN

SUMMARY SUIT NO.585 OF 2004

Ranjana A. Marathe .. Plaintiff

versus

M/s.Harshad Arts & ors. .. Defendants

...

Mr.Tejas Bhatt for the plaintiff.

Mr.A.S Malvankar for the defendant.

CORAM : D.G. KARNIK,J.

DATED : 7th March 2005.

P.C.:

1. Heard the learned counsel for the parties.

2. The defendant no.1 is a partnership firm and defendant nos.2 to 5 are its partners.

3. The plaintiff advanced to the defendant a sum

of Rs.2,00,000/- and the defendant agreed to pay the sum with interest at 18% p.a. On 1st April 2003, the defendant no.1 confirmed the balance outstanding of Rs.2,00,000/-. As the amount was not paid, the plaintiff issued a notice of demand. However, the defendant failed and neglected to make the payment. Hence, plaintiff has filed this suit for the recovery of the principal sum and interest thereon.

4. By filing an affidavit in reply, the defendant no.3 has admitted receipt of Rs.2,00,000/-. He however contends that a Maruti 800 car was given to the plaintiff in March 2003 in lieu of the said loan. The plaintiff, by filing an rejoinder has explained that the Maruti car was purchased by him for Rs.50,000/-. The Maruti car was purchased in the year 1996 and was of the year 1974 and could not be borrowed at Rs.2,00,000/- in the year 2003. Besides, the defendant no.1 has also written a letter to the RTO in March 2003 admitting that the car was sold to the plaintiff for Rs.50,000/- only. Furthermore, in April 2003 i.e. after the sale, the defendant no.1 has admitted the balance due of Rs.2,00,000/- by sending a statement of balance confirmation. In the circumstances, the defence of the defendant that the

car was given to the defendant and therefore, no money is due is not a defence of any substance.

4. For these reasons, the defendants can only be granted conditional leave to defend the suit subject to their depositing the principal sum in the Court.

5. The defendants are granted conditional leave to defend the suit, subject to their depositing in the Court principal sum of Rs.2,00,000/- within a period of eight weeks. On such deposit, the plaintiff shall be entitled to withdraw the said sum by furnishing security to the satisfaction of Prothonotary and Sr. Master. On failure to deposit, the plaintiff shall have liberty to apply.

6. On deposit of the money, suit shall stand transferred to the list of commercial causes. The defendant shall file written statement within a period of 10 weeks.

D.G. KARNIK, J